UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JACKSON LEWIS LLP ATTORNEYS FOR DEFENDANTS 666 Third Avenue New York, New York 10017 (212) 545-4000

> ATTORNEYS OF RECORD: FELICE B. EKELMAN, ESQ. NOEL P. TRIPP, ESQ.

KARLY ESPINAL, GREGORIO VASQUEZ, JESUCRISTO SANTOS LUNA, YAN CARLOS MENA, NELSON DIAZ, ENGLES RODRIGUEZ, EDDY NUNEZ, MIGUEL AGRAMONTE-BAEZ, CORPUS PEREZ, SANTOS ROJASFRIAS, and JUAN N. NUNEZ, on behalf of themselves and others similarly situated,

Plaintiffs,

Civ. No.: 12-CV-5313

Swain, J.

-against-

SHINOBI NY LLC d/b/a/ NINJA NEW YORK, HARUO YAZAKI, and JOHN DOES 1-10,

Defendants.

TO: C.K. LEE, ESQ.

LEE LITIGATION GROUP, PLLC ATTORNEYS FOR PLAINTIFFS EDDY NUNEZ And SANTOS ROJAS-FRIAS 30 East 39th Street, Second Floor New York, NY 10016

AFFIDAVIT OF RIEKO TAKAMIYA

STATE OF NEW YORK)	
)	SS.
COUNTY OF NEW YORK)	

Rieko Takamiya, deposes and says:

- 1. I am Office Manager for Defendant SHINOBI NY LLC, which owns and operates Ninja Restaurant located at 25 Hudson Street in Manhattan ("Ninja"). In that role, I am familiar with how Ninja pays its workers. This affidavit is based on my personal knowledge and my review of Ninja's business records. I am submitting this affidavit in opposition to Plaintiffs Eddy Nunez and Santos Rojas-Frias' ("Plaintiffs") request to send a court approved Notice to individuals employed only after August 20, 2012.
- 2. Ninja has paid overtime to all employees Plaintiffs seek to represent in the collective action from the period August 20, 2012 to the present. Ninja denies Plaintiffs' allegations that they or others were denied proper overtime for the period prior to August 20, 2012 for a number of reasons, including the fact that Ninja is open only for dinner, and hours worked are correspondingly limited for most employees. For example, no server or other "front of the house" worker is scheduled to work more than 32 hours per week (4 shifts of 8 hours each). Beginning August 20, 2012, Ninja modified its pay practices to ensure that all eligible employees were paid overtime when they work more than 40 hours in a week.
- 3. Attached hereto are paystubs for various individuals who were hired by Ninja after August 20, and to whom Plaintiffs wish to send Notice. As is evident from the records, each employee was paid overtime when they worked more than 40 hours in a week.
- 4. Plaintiff Nunez worked for Ninja from on or about May 8, 2009 to on or about July 1, 2012. His rate of pay was never less than nine dollars per hour.

5. Plaintiff Rojas-Frias worked for Ninja from on or about September 12, 2008 to on or about January 23, 2011. His rate of pay was never less than nine dollars per hour.

RIEKO TAKAMIYA

7/8/2013

Sworn to and subscribed before me this 8th day of July, 2013.

Notary Public

4828-1987-9956, v. 2

ANA D CORSINO
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01CO6256757

Augilitied in New York County

My Commission Expires 23-05

05/03/2013

**686.93

*****Six hundred and eighty-six and 93/100

REDACTED

Pay Period: 04/14/2013 - 04/27/2013

	*	

PAY	Hours	Rate	Current	YTD	TAXES	Current	YTD
Regular Pay	78.50	10.00	785.00	1,453,25	Federal Income Tax	17.70	22.60
Overtime Pay	0.75	15.00	11.25	11.25	Social Security	49.37	90,80
ŕ					Medicare	11.55	21.24
					NY Income Tax	17.55	29,43
					NY City Income Tax	11.95	19.93
					DEDUCTIONS	Current	YTD
					NY - Disability	1.20	2.40
OTHER PAY			Current	OTY			

NY - Disability

SUMMARY	Current	YTD
Total Pay	\$796.25	\$1,464.50
Taxes	\$108.12	\$184.00
Deductions	\$1.20	\$2.40
NET PAY:		\$686.93

Pay Date 05/03/2013

BENEFITS

PAY	Hours	Rate	Current	YTD
Regular Pay	78.50	10.00	785.00	1,453.25
Overtime Pay	0.75	15.00	11.25	11.25

TAXES	Current	YTD	
Federal Income Tax	17.70	22,60	
Social Security	49.37	90.80	
Medicare	11.55	21.24	
NY Income Tax	17.55	29.43	
NY City Income Tax	11.95	19.93	
DEDUCTIONS	Current	QTY.	

2.40

SHINOBI NY LLC	
100 CHURCH STREET STE	
816	
NEWYORK	
NY, 10007	

SHINOBI NY LLC 100 CHURCH STREET STE

816

NEW YORK NY, 10007 646-717-0266

Pay Period

мемо:

04/14/2013 - 04/27/2013

OTHER PAY	Current	YTD

OTHER PAY	Current	YTD

Used

Available

Pay Period 04/14/2013 - 04/27/2013	BENEFITS	Used Available
Pay Date		

Current	YTD
\$796.25	\$1,464.50
\$108.12	\$184.00
\$1.20	\$2.40
	\$796.25 \$108.12

NET PAY: \$686.93

05/03/2013 MEMO:

646-717-0266

10/19/2012

**522.80

*****Five hundred and twenty-two and 80/100

REDACTED

Pay Period: 09/30/2012 - 10/13/2012

Pay Date

10/19/2012

MEMO:

	PAY	Hours Rate	Current	YTD	TAXES	Current	YTD
g de	Regular Pay	63.75 9.00	573.75	1,473.75	Federal Income Tax	12.96	30.43
	Overtime Pay	1.00 13.50	13.50	13.50	Social Security	24.66	62.46
	•				Medicare	8.52	21.57
					NY Income Tax	10.45	23.15
					NY City Income Tax	6.66	14.94
					DEDUCTIONS	Current	YTD
SHINOBI NY LLC 100 CHURCH STREET STE				,	NY - Disability	1.20	3.65
816 NEW YORK	OTHER PAY		Current	QTD			
NY, 10007 646-717-0266							
) cres
Pay Period					SUMMARY	Current	OTY
09/30/2012 - 10/13/2012	BENEFITS		Used	Available	Total Pay	\$587.25	\$1,487.25
					Taxes	\$63.25	\$152.55
Pay Date 10/19/2012	•				Deductions	\$1.20	\$3.65
MEMO:					NET PAY:		\$522.80
	PAY Regular Pay	Hours Rate 63.75 9.00	Current 573.75	YTD 1,473,75	TAXES Federal Income Tax	<u>Current</u> 12.96	YTD 30.43
	Overtime Pay	1.00 13,50	13.50	13,50	Social Security	24.66	62.46
•	•				Medicare	8.52	21.57
					NY Income Tax	10.45	23.15
					NY City Income Tax	6.66	14,94
SHINOBI NY LLC					DEDUCTIONS	Current	OTY
100 CHURCH STREET STE					NY - Disability	1.20	3.65
816 NEWYORK NY, 10007 646-717-0266	OTHER PAY		Current	YTD			
Pav Period					SUMMARY	Current	YTD
Pay Period 09/30/2012 - 10/13/2012	RENEFITS		Used	Available		Current \$587.25	
Pay Period 09/30/2012 - 10/13/2012	BENEFITS		Used	Available	SUMMARY Total Pay Taxes		\$1,487.25 \$1,52.55

Deductions

NET PAY:

\$1.20

\$3.65

\$522.80

01/11/2013

**592.88

\$592.88

*****Five hundred and ninety-two and 88/100



NET PAY:

Pay Period: 12/23/2012 - 01/05/2013

мемо:

ş	PAY	Hours	Rate	Current	YTD	TAXES	Current	YTD
100	Regular Pay	74,25	9.00	668.25	668.25	Federal Income Tax	16.06	16.06
1	Overtime Pay	1.00	13.50	13.50	13.50	Social Security	42.27	42.27
,	•					Medicare	9.89	9.89
₹						NY Income Tax	11.65	11.65
,						NY City Income Tax	7.80	7.80
						DEDUCTIONS	Current	YTD
SHINOBI NY LLC						NY - Disability	1.20	1.20
100 CHURCH STREET STE						,		
816	OTHER PAY			Current	YTD			
NEWYORK	3 11112111 111							
NY, 10007								
646-717-0266								
Pay Period						SUMMARY	Current	YTD
12/23/2012 - 01/05/2013	BENEFITS			Used	Available	Total Pay	\$681.75	\$681.75
						Taxes	\$87.67	\$87,67
Pay Date						Deductions	\$1.20	\$1,20
01/11/2013						NET PAY:		\$592.88
MEMO:						HEITAI.		4001.00
	PAY Regular Pay	Hours 74.25		Current 668.25	YTD 668.25	TAXES Federal Income Tax	Current 16.06	YTD 16,06
	Overtime Pay	1.00	13,50	13.50	13.50	Social Security	42.27	42.27
						Medicare	9.89	9.89 11.65
						NY Income Tax	11.65 7.80	7,80
						NY City Income Tax	7.00	7,00
SHINOB! NY LLC						DEDUCTIONS	Current	YTD
100 CHURCH STREET STE						NY - Disability	1.20	1.20
816								
NEWYORK	OTHER PAY			Current	YTD			
NY, 10007								
646-717-0266								
545-7 [7-0256								
Pay Period						SUMMARY	Current	ΦΤΥ
12/23/2012 - 01/05/2013	BENEFITS			Used	Available	Total Pay	\$681,75	\$681.75
					_	Taxes	\$87.67	\$87.67
Pay Date 01/11/2013						Deductions	\$1.20	\$1.20
01/11/2013						NET DAY:		\$502.88

05/31/2013

**768.94

*****Seven hundred and sixty-eight and 94/100



Pay Period: 05/12/2013 - 05/25/2013

	PAY	Hours	Rate	Current	פדץ	TAXES	Current	QTY
2	Regular Pay	72,00	10.00	720.00	802.50	Federal Income Tax	28,83	28,83
	Overtime Pay	12,50	15.00	187.50	187.50	Social Security	56.26	61.38
						Medicare	13.16	14.36
						NY Income Tax NY City Income Tax	23.47 15.64	23.47 15.64
						NY ONY HIGORIE LAX	10.04	10.04
						DEDUCTIONS	Current	YTD
SHINOBI NY LLC 100 CHURCH STREET STE						NY - Disability	1.20	1.61
816	OTHER PAY			Current	YTD			
NEWYORK	UIDERPAT			Cuitent	110			
NY, 10007								
646-717-0266								
Day Dayland						SUMMARY	Current	YTD
Pay Period 05/12/2013 - 05/25/2013	DENEELTO			Used	Available	Total Pay	\$907.50	\$990,00
05/12/2015 - 05/25/2015	BENEFITS			usea	Available	Taxes	\$907.30 \$137.36	\$143.68
Pay Date						Deductions	\$137.35 \$1,20	\$1.61
05/31/2013							\$1,20	
MEMO:						NET PAY:		\$768.94
3								
	PAY	Hours	Rate	Current	YTD	TAXES	Current	YTD
	Regular Pay	72.00 12.50	10.00 15.00	720.00 187.50	802.50 187,50	Federal Income Tax Social Security	28,83 56.26	28.83 61.38
	Overtime Pay	12.50	15.00	167,50	167,50	Medicare	13.16	14.36
						NY Income Tax	23.47	23.47
						NY City Income Tax	. 15.64	15.64
SHINOBI NY LLC						DEDUCTIONS	Current	DTY
100 CHURCH STREET STE						NY - Disability	1.20	1.61
816	ATVITO DAV				VTD			
NEWYORK	OTHER PAY			Current	YTD			
NY, 10007								
646-717-0266								
Day Davin d						SUMMARY	Current	YTD
Pay Period 05/12/2013 - 05/25/2013	DENERITO			Used	Available	Total Pay	\$907.50	\$990.00
50/12/2013 ~ 03/23/2013	BENEFITS			USEU	Avaitable	Taxes	\$137.36	\$143.68
Pay Date						Deductions	\$137.35 \$1,20	\$1.61
05/31/2013						NET PAY:	V1,20	\$768.94
MEMO:						NEI PAT:		₹100.34
memo.								

04/05/2013

**637.68

*****Six hundred and thirty-seven and 68/100

REDACTED

DEDUCTIONS

NET PAY:

NY - Disability

Pay Period: 03/17/2013 - 03/30/2013

PAY

Regular Pay

Overtime Pay

PAY	Hours	Rate	Current	YTD
Regular Pay	72,50	10.00	725.00	1,622,50
Overtime Pay	2.75	15.00	41.25	41.25

TAXES	Current	YTU
Federal Income Tax	40.08	59.12
Social Security	47.50	103.15
Medicare	11.11	24.12
NY Income Tax	17.07	25.99
NY City Income Tax	11.61	18.43
·		

SHINOBI NY LLC 100 CHURCH STREET STE 816 NEW YORK

OTHER PAY Current

YTD

YTD Current 3.60 1.20

\$637.68

Pay Period 03/17/2013 - 03/30/2013

BENEFITS Available

Hours

72.50

2.75

Rate

10.00

15,00

Current

725,00 41.25

SUMMARY	Current	YTD
Total Pay	\$766.25	\$1,663.75
Taxes	\$127.37	\$230.81
Deductions	\$1.20	\$3.60

04/05/2013 мемо:

Pay Date

NY, 10007 646-717-0266

YTD

41.25

1,622.50

TAXES	Current	YTD
Federal Income Tax	40.08	59.12
Social Security	47.50	103.15
Medicare	11.11	24,12
NY Income Tax	17.07	25,99
NY City Income Tax	11.61	18.43

SHINOBI NY LLC 100 CHURCH STREET STE 816 NEWYORK NY, 10007 646-717-0266

OTHER PAY Current

YTD

YTD Current 3 60 1.20

Pay Period 03/17/2013 - 03/30/2013

BENEFITS Used Available

SUMMARY	Current	YTD
Total Pay	\$766.25	\$1,663.75
Taxes	\$127.37	\$230.81
Deductions	\$1.20	\$3.60

04/05/2013 мемо:

Pay Date

NET PAY:

DEDUCTIONS

NY - Disability

\$637.68